

PROB 12C
(5/00)UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
ENTERED

MAY 05 2005

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF TEXAS

Michael N. Milby, Clerk of Court

Second Superseding Petition for Offender Under Supervision

Name of Offender: Damon Wayne Flowers Case Number: 6:03CR00028-001

Name of Sentencing Judge: The Honorable John D. Rainey

Date of Original Sentence: September 22, 2003

Original Offense: Felon in Possession of a Firearm

Original Sentence: 10 months BOP, 3 years Supervised Release and \$500 fine

Type of Supervision: Supervised Release Supervision Started: February 27, 2004

Assistant U.S. Attorney: Timothy G.E. Hammer Defense Attorney: Jason Libby

PREVIOUS COURT ACTION

On September 16, 2004, a Probation Form 12C was filed alleging that the defendant committed a law violation of assault, failed to abide by the drug treatment program's rules and regulations and failed to abide by the mental health treatment program's rules and regulations. The Court issued a warrant on September 17, 2004, and it was executed on February 25, 2005. The defendant remains in custody.

On March 3, 2005, a Superseding Probation Form 12C was filed alleging that the defendant committed a law violation of assault, failed to abide by the drug treatment program's rules and regulations and failed to abide by the mental health treatment program's rules and regulations, and committed a law violation of driving while intoxicated.

PETITIONING THE COURT

To consider the allegations contained in this superseding petition at the revocation hearing set for May 10, 2005.

The probation officer believes that the offender has violated the following conditions of supervision:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	Law Violation - Assault

On or about August 27, 2004, Damon Wayne Flowers in Victoria County, committed the offense of Assault in that he struck Katrina Flowers in the stomach with his fist in violation of Texas PC §22.01.

Flowers, Damon Wayne

6:03CR00028-001

Details: On August 27, 2004, Victoria Police Department Officer Eddie J. Stevens was dispatched to 1008 McClane, where he spoke to Katrina Flowers. She advised that while she was getting gasoline at the Speedy Stop convenience store, 8701 N. Navarro, her estranged

husband Damon Wayne Flowers showed up at the location. Katrina further stated that Damon is living in Cuero and she is living with her parents at 1008 McClane. Damon began to argue with Katrina, and she told him to leave her alone. Damon then punched her in the stomach with his fist, causing Katrina pain.

In an interview with Katrina Flowers, she told this U.S. Probation Officer that the defendant had been following her around all day on August 27. She traveled to the Texas Workforce Solutions at 120 S. Main, Victoria. The defendant followed her inside the Texas Workforce Solutions and he kept telling her that he wanted to talk to her, but she kept telling the defendant to leave her alone. Katrina further stated that when she left the Texas Workforce Solutions she went to the Speedy Stop. While she was putting gas in her vehicle, the defendant jumped out from behind the gas pump. He began cussing at Katrina and threatened to pour gasoline all over her and light a fire. He also tried to get the car keys from Katrina and when she turned around he hit her in the stomach. Katrina added that she pushed the defendant away from her and then got in her car and went home and called the police.

2 Failure to Abide by the Drug Treatment Program's Rules and Regulations

Damon Wayne Flowers was participating in a drug treatment program with Treatment Associates, Inc. and was in Phase II, requiring one and one-half counseling sessions and two urine specimens per month. He violated the rules and regulations of Treatment Associates, Inc. by failing to attend a drug counseling session on August 2, 2004, and failing to submit urine specimens on May 13, 2004, and May 27, 2004, June 8, 2004, June 24, 2004, July 5, 2004, July 16, 2004, July 27, 2004, August 5, 2004, August 9, 2004, August 19, 2004, and August 30, 2004.

3 Failure to Abide by the Mental Health Treatment Program's Rules and Regulations

Damon Wayne Flowers was participating in a mental health treatment program with Treatment Associates, Inc. and was required to attend two counseling sessions per month. He violated the rules and regulations of Treatment Associates, Inc. by failing to attend any mental health counseling sessions during the month of July 2004 and failing to attend one counseling session in August 2004.

4 Law Violation - Driving While Intoxicated

On or about September 8, 2004, Damon Wayne Flowers in Cuero, Texas committed the offense of driving while intoxicated by operating a motor vehicle in a public place to wit: a public road and highway, while intoxicated, when the defendant did not have the normal use of his mental and physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances and any other substance into the defendant's body and having an alcohol concentration of 0.08 or more in violation of TPC §49.04

Flowers, Damon Wayne**6:03CR00028-001**

Details: On September 8, 2004, at 11:52 pm Damon Wayne Flowers was observed by a Department of Public Safety Trooper driving a pickup on U.S. Highway 87 over the posted nighttime speed limit of 65 mph. The speed of the defendant's vehicle was clocked on the radar at 97mph. The DPS trooper traveled at speeds in excess of 100 mph before catching up to Flowers and pulling him over. The trooper asked the defendant to step out of the vehicle and as Flowers walked towards the trooper, Flowers was unbalanced and had to hold on to the bed of the truck to maintain his balance. The trooper could smell a strong odor of alcohol on the defendant's breath and the trooper asked him how much alcohol he had to drink and he responded "one drink or two". The trooper administered field sobriety tests and also requested a breath test on the portable breath tester. The defendant failed the field sobriety tests and his breath measured .183 BAC. Flowers was then placed under arrest for driving while intoxicated.

Flowers' demeanor then changed and he began to curse loudly and act belligerently. He kicked the door of the patrol car and the inside of the car. The defendant continued to be belligerent and had to be sprayed with O. C. spray, but continued to resist the officers and refused to settle down. In the DeWitt County Jail he had to be placed in a restraining chair. Flowers refused to submit a breath specimen at the jail.

On December 9, 2004, the defendant entered a plea of guilty to the charge of driving while intoxicated 2nd in the County Court of DeWitt County in cause no. 2004-13,645 and was sentenced to 120 days in the DeWitt County Jail.

5 Law Violation - Assault

On or about September 8, 2004, Damon Wayne Flowers in DeWitt County, Texas committed the offense of assault in that he knowingly and intentionally threatened to harm John Bauer, III, with imminent bodily injury by threatening to assault and kill John Bauer, III in violation of TPC 22.01(a)(2).

Details: On or about September 8, 2004, Dewitt County Sheriff's Deputy John Bauer, III, arrived at the scene of the driving while intoxicated arrest of Damon Wayne Flowers. Bauer found the DPS Trooper conducting field sobriety tests on Flowers. Flowers claimed that he was a United States Marine Corps sniper and that if he wanted out of the handcuffs he could get out. Flowers advised that he would take Deputy Bauer and the trooper physically out. When Flowers was placed in Deputy Bauer's patrol car, Flowers became combative and began kicking the windows of the patrol car. Bauer opened the door of the patrol car and sprayed OC spray on Flowers. Flowers exited the patrol car and advanced towards the trooper and Bauer. Flowers was restrained and placed on the ground to gain control over him. While being restrained, Flowers stated to Deputy Bauer that Flowers was going to kill Deputy Bauer. Flowers was placed back into the patrol car. As Deputy Bauer transported Flowers to the DeWitt County Jail, Flowers stated that he was going to kick Bauer's ass. In the DeWitt County Jail, Flowers continued to make threats towards Bauer and Bauer's family and stated that he was going to assault Bauer when Flowers got out of jail.

On February 24, 2005, the defendant entered a plea of guilty to the charge of assault in the 24th Judicial District Court of DeWitt County in cause no. 04-12-10,069 and was sentenced to 120 days in the DeWitt County Jail.

Flowers, Damon Wayne

6:03CR00028-001

6 Law Violation - Assault

On or about September 8, 2004, Damon Wayne Flowers in DeWitt County, Texas, committed the offense of assault in that he knowingly and intentionally threatened to harm Jonathan Zielonka, with imminent bodily injury by threatening to assault and kill Jonathan Zielonka in violation of TPC 22.01(a)(2).

Details: On or about September 8, 2004, DeWitt County Jailer, Jonathan Zielonka assisted in escorting Damon Wayne Flowers to booking in the DeWitt County Jail. Flowers threatened Jailer Zielonka and stated to Zielonka that Flowers would whip Zielonka's ass. Flowers also stated to Zielonka that he would kill Zielonka.

On February 24, 2005, the defendant entered a plea of guilty to the charge of assault in the 24th Judicial District Court of DeWitt County in cause no. 04-12-10,070 and was sentenced to 120 days in the DeWitt County Jail.

U.S. Probation Officer Recommendation:

- ☒ The term of supervision should be
 ☒ revoked.
 ☐ extended for years, for a total term of years.
- ☐ The conditions of supervision should be modified:

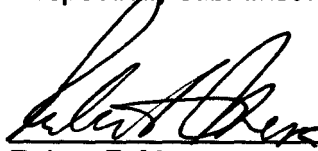
I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Approved:


James C. Martinez, Supervising
U.S. Probation Officer

Respectfully submitted:

by


Ruben F. Mesa
U.S. Probation Officer
May 3, 2005

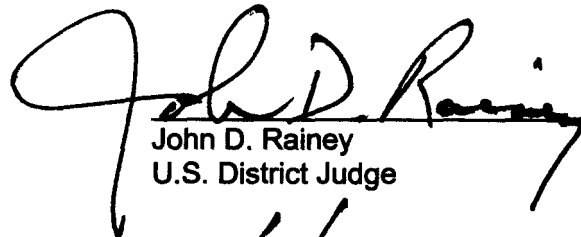
Flowers, Damon Wayne

6:03CR00028-001

THE COURT ORDERS:

☐ No Action

☒ Other -To consider the allegations contained in this superseding petition at the revocation hearing set for May 10, 2005.


John D. Rainey
U.S. District Judge
5/5/05
Date